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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 10th February 2005

No. 1446—li/1(B)-146/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2004 in Industrial Disputes Case No. 226 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Orissa Lift Irrigation Corporation and its workman Shri Harihar Behera was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 226 OF 1995

Dated the 31st December 2004

#### *Present :*

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)  
Presiding Officer, Labour Court  
Bhubaneswar.

#### *Between :*

The Management of Orissa Lift Irrigation Corporation.	..	First Party—Management
And		
Its Workman Shri Harihar Behera.	..	Second Party—Workman

#### *Appearances :*

For the First Party—Management	..	Shri R. K. Panda
Second Party —Workman himself	..	Shri H. Behera

## AWARD

The State Government In exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 10260(6)-L. E., dated the 11th August 1995 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“ Whether the retrenchment of Shri Harihar Behera, N. M. R. Helper with effect from the 1st May 1984 by the Management of Orissa Lift Irrigation Corporation, Banki is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”

3. The brief facts giving rise to the present reference are that workman Shri Harihar Behera was engaged as N. M. R. worker by the management of Orissa Lift Irrigation Corporation, Banki (in short the management) during August, 1982. He continued to work for four months and thereafter he was retrenched from service. Again he was engaged by the management as N. M. R. worker with effect from March, 1983 till April, 1984. Thereafter he was retrenched by the management with effect from the 1st May 1984. According to the workman although he had rendered continuous service for more than one year with much sincerity, devotion and to the utmost satisfaction of the authority but the management without any rhyme or reason retrenched him from service with effect from the 1st May 1984 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). After such retrenchment he approached the Labour machinery but to no effect. Ultimately the case was referred to this Court for adjudication. According to the workman, since the action of the management in retrenching him from service with effect from the 1st May 1984 was arbitrary, illegal and unjustified, he has now prayed for his reinstatement in service with full back wages. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman had never rendered continuous service and he was not refused employment. One H. Behera was working in the establishment of the management and voluntarily absconded from duty without any information. It is further averred that the name of Harihar Behera was not found anywhere in the records of the management nor any disengagement order had been issued to him. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :—

## ISSUES

- (i) Whether the retrenchment of Shri Harihar Behera, N. M. R. Helper with effect from the 1st May 1984 by the Management of Orissa Lift Irrigation Corporation, Banki is legal and/or justified ?
- (ii) If not, what relief Shri Behera is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. Similarly, the management has examined one Abani Kanta Pradhan as M. W. 1 but has not relied upon any document in support of its case.

### FINDINGS

7. For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman emerges that he was working under the management with effect from August, 1982 till April, 1984 as N. M. R. On the 1st May 1984 he was refused employment and prior to refusal of employment, he was not given any notice or notice pay and retrenchment compensation. No enquiry was also held against him before refusal of employment. He has clearly stated that after refusal of employment the management engaged other 15 persons. During cross-examination he has categorically stated that he had worked under the establishment of the management more than 240 days in a calendar year but the then Assistant Engineer refused employment to him. On the other hand, the evidence of M. W. 1, Abani Kanta Pradhan already adduced on behalf of the management clearly goes to show that the workman had never worked under the management and he had not issued any experience certificate to him. During cross-examination he has denied his knowledge if any experience certificate had been granted in favour of the workman on the 17th September 1990 by the Assistant Engineer, Lift Irrigation Subdivision, Banki.

8. Both the management and the workman have led evidence in support of their respective cases. It is clearly evident from the evidence of the workman that he had worked under the management with effect from August, 1982 till April, 1984 but he was refused employment on the 1st May 1984 and prior to such refusal of employment he was not given any prior notice or notice pay and retrenchment compensation. It further reveals from his evidence that he had worked under the management for more than 240 days in a calendar year. But on the other hand the evidence led by the management through M. W. 1 clearly shows that the workman had never worked in the establishment of the management at any point of time during the above said period and the management had not refused employment to him. In the light of the above evidence adduced by the parties, the principal issue thus appears to be as to whether the workman had completed 240 days of work in terms of the statutory provision. The settled position of law is that proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum by the management. Admittedly the requirement of the Statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months period. The definite case of the workman is that he had worked under the management for more than 240 days in a calendar year but surprisingly enough no such document is placed before me to come to a definite conclusion that the workman in fact had completed 240 days of service in terms of statutory provision. Although the workman has claimed that he had worked for more than 240 days in a calendar year, but such claim has been denied by the management. Therefore it is for the workman to prove that he had in fact completed 240 days in last preceding 12 months period. Except the oral evidence, there is no cogent material on record to show that the workman had completed 240 days of service in terms of the statutory provisions. No proof of

receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period has been produced by the workman. Therefore the mere oral evidence cannot be regarded as sufficient evidence so as to come to an irresistible conclusion that the workman had, in fact worked for 240 days in a year. The workman in this respect has miserably failed to substantiate his own case with regard to, his continuous service for more than 240 days under the management in terms of the statutory provisions. In such view of the matter, the workman is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
31-12-2004  
Presiding Officer  
Labour Court  
Bhubaneswar.

P. K. SAHOO  
31-12-2004  
Presiding Officer  
Labour Court  
Bhubaneswar.

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By order of the Governor  
D. MISHRA  
Under-Secretary to Government